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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/688,294   | 10/17/2003  | Joseph C. Chen       | 555255012603          | 9191             |
| 33070  | 7590        | 10/20/2005           | EXAMINER              |                  |
| JOSEPH M. SAUER<br>JONES DAY REAVIS & POGUE<br>NORTH POINT, 901 LAKESIDE AVENUE<br>CLEVELAND, OH 44114 |             |                      | TIBBITS, PIA FLORENCE |                  |
|  |             |                      | ART UNIT              | PAPER NUMBER     |
|  |             |                      | 2838                  |                  |

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

**Office Action Summary**

Application No.

10/688,294

Applicant(s)

CHEN ET AL.

Examiner

Pia F. Tibbits

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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**DETAILED ACTION**

This Office action is in answer to the election filed 9/1/2005. Applicant's argument is persuasive, and the restriction requirement is withdrawn.

***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the total battery time for a fully charged battery, the active time of each subsystem circuit or function, the voice threshold temperature, etc. must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter: "the battery capacity is measured as a percentage of total battery time for a fully charged

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battery", "the active time of each subsystem circuit or function", "voice threshold temperature", etc. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-9, 11, 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hull et al.** [hereinafter Hull][5606242] in view of prior art disclosed by applicant, **Dunstan et al.** [hereinafter Dunstan][5964879].

As to claim 1: the statement that "for managing a plurality of subsystem circuits and functions of a mobile communication device", it has been held that a recitation with respect to the manner or method in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See ***Ex parte Masham***, 2 USPQ2d 1647, 1648 (Bd. Pat. App. & Inter. 1987); ***In re Casey***, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967); see also M.P.E.P. § 2111.02, 2114. A process or environment of use limitation in an apparatus claim will not patentably distinguish the claim from the prior art unless it somehow imposes a structural limitation. "[I]ntended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art." M.P.E.P. § 2111.02 (citing ***In re Casey***, 152 USPQ 235 (CCPA 1967) and ***In re Otto***, 136 USPQ 458, 459 (CCPA 1963)).

A claim preamble has the import that the claim as a whole suggests for it. Where the claim preamble is used to recite structural limitations of the claimed invention, the PTO and courts give effect to that usage. Conversely, where a structurally complete invention in the claim body is defined and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim

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limitation. The determination of whether preamble recitations are structural limitations or mere statements of purpose or use can be resolved only on review of the entire patent in order to gain an understanding of the inventions and the claims. *Rowe v. Dror*, 42 USPQ2d 1550 (Fed. Cir. 1997) (where the court concluded that the patent did not anticipate the claims).

Hull discloses in figures 1-20B a battery management system for managing a plurality of subsystem circuits and functions [see fig.1] comprising: a "smart" battery monitoring circuit/hybrid IC 32 [see fig.2A; column 7, line 20] operable to monitor a present battery capacity [see abstract; figures 6A, 6B; column 5, line 13] and generate a battery capacity signal based on the present battery capacity [see column 5, line 11]; a user interface operable to receive a user input allocation of battery capacity among the subsystem circuits and functions; and a battery management module operable to receive the user input allocation [see column 1, lines 31-34] and the battery capacity signal, and selectively to disable each subsystem circuit or function [see column 1, lines 44-52]. Hull does not disclose an allocation of battery capacity.

Dunstan discloses in figures 5 and 8 an allocation of battery capacity/power budgeter application 84 receives power allocation requests from application programs and device driver programs through the power coordinator 90 and compares the information logged in the power characterization table 86 with the amount of available power to determine whether the battery subsystem 12 can satisfy the power allocation request. [see column 7, lines 32-35, 48-54]. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Hull's apparatus and include an allocation of battery capacity, as disclosed by Dunstan, in order to be able to determine whether the battery subsystem can satisfy the power allocation request.

As to claims 2-9, 11, 14, see remarks and references above.

As to the method claims 15-19: the method steps will be met during the normal operation of the apparatus described above.

6. Claims 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hull** and **Dunstan**, as described above in view of **Loudermilk et al.**[hereinafter **Loudermilk**][6393401].

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As to claim 12, Hull and Dunstan do not disclose the functions comprise a voice function.

Loudermilk discloses digital or analog information representing a desired audio message is retrieved from a memory device, which is subsequently transmitted to a speaker, which produces a desired audio message perceptible to a human [see abstract; column 19, lines 16-20]. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Hull's and Dunstan's apparatus and include an voice/audio function, as disclosed by Loudermilk, in order to be able to produces a desired audio message perceptible to a human.

As to claims 12, 13, 20, 21, see remarks and references above.

As to the method claims 20-22: the method steps will be met during the normal operation of the apparatus described above.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related apparatus: **Reichelt** [6427072] discloses a reserve power system for any battery operated device-mobile telephone- to allocate a predetermined reserve power level in a battery operated device for emergency or pre-selected activity use, and to enable a more accurate battery level determination and use of said information for predetermined systems or apparatus activities.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pia Tibbits whose telephone number is 571-272-2086. If unavailable, contact the Supervisory Patent Examiner Mike Sherry whose telephone number is 571-272-2084. The Technology Center Fax number is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFT

October 6, 2005

Pia Tibbits

Primary Patent Examiner